PRO BONO INNOVATIONS: A REPORT ON ASSOCIATE EXTERNSHIPS AND FELLOWSHIPS

Pro Bono and Public Interest Committee
Commercial and Federal Litigation Section
New York State Bar Association
November 1999

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PRO BONO INNOVATIONS:
A REPORT ON ASSOCIATE EXTERNSHIPS AND FELLOWSHIPS

In an innovative effort to meet their professional duty of providing pro bono representation and assisting their community with much needed legal services, eleven private law firms in New York City have sponsored associates to work full-time on pro bono matters, usually by rotating the associates in and out of outside legal services provider organizations.[1] Whether described as pro bono externships, internships, fellowships,[2] or rotation programs, these full-time pro bono positions generally allow associates to work full-time with legal services organizations for a period ranging from two months to two years. The Pro Bono and Public Interest Committee of the New York State Bar Association's Commercial and Federal Litigation Section (the "Committee")[3] has reviewed a variety of these programs by discussing them with the law firms that sponsor them, as well as with the participating associates and legal services provider organizations. As reflected in this report, the Committee has found these programs to be effective and efficient in providing critical pro bono legal services to the community, while also improving the firm's pro bono culture. The Committee strongly urges law firms and corporate law departments[4] throughout the state to consider establishing such a program as one aspect of fulfilling their professional obligation to provide pro bono legal services to those members of the community who otherwise would not have access to them.

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1 New York is not alone in these programs. Such programs have become successful in Washington, D.C., Boston, San Francisco, and Minneapolis. Victoria Rivkin, *Associate "Externships" Benefit Nonprofits and Large Firms*, N.Y.L.J., Apr. 19, 1999, at 1.

2 The firm-sponsored positions detailed in this report should not be confused with either (i) the Skadden Fellowship Program, through which the law firm of Skadden, Arps, Slate, Meagher & Flom ("Skadden") sponsors attorneys not associated with Skadden to work at public interest organizations throughout the nation, or (ii) the National Association of Public Interest Law ("NAPIL") fellowships, for which many private law firms have agreed to pay portions of the salaries of attorneys not associated with the law firms, who also work at public interest organizations throughout the nation. The fellowships detailed in this report involve firms' allowing their own associates to practice pro bono full-time.

3 The Committee's mission is to promote pro bono and public interest activities among the private bar. The Committee's work in issuing this report fits squarely within this mission.

4 Although the Committee is unaware of any corporate law department that has an externship or fellowship program, the positive aspects that law firms perceive as resulting from these full-time pro bono positions also should apply to corporate law departments. It is noted that attorneys working in corporate law departments have the same pro bono obligations as do attorneys working in law firms or solo practices.

DESCRIPTION OF PROGRAMS

The programs are divided into two groups: externships and fellowships.[5] The primary difference between the two is their length: the eight externships are two-to-six months in length, while the three fellowship programs last one-to-two years. In addition, unlike the externships, which all pay the participating associates his/her regular firm salary, the fellowships are not uniform in the salaries that the firms pay the participating associates--the primary cost to the firm for sponsoring an externship or fellowship.

EXTERNSHIPS

Eight of the eleven full-time pro bono programs in New York City are externships. Typically, in a pro bono externship, a law firm selects a volunteer associate to work full-time for a two-to-six month period at the office of a legal services provider organization designated or approved by the firm. At the end of the period, the associate returns to the firm and another associate takes his or her place, after a brief overlap to assist continuity between externs. The firm continues to pay the associate's salary and benefits, which remain at the level of the associate's class, during the rotation period.

Firms see a variety of benefits stemming from the programs. They are a good way to supplement the pro bono work of lawyers at the firm; they heighten the visibility of pro bono work at the firm; they help the firm recruit new associates; they provide skills training and professional development for the associates; they improve associates' morale; they assist legal services provider organizations who are fighting to survive under the recent cutbacks in public funding; they enhance the reputation of the firm; and they impress the firms' clients. Associates view it as an opportunity to gain valuable legal experience, while "doing good" at the same time. Moreover, by focusing a substantial effort in one place, the externship provides both the associate and the firm with the opportunity to make a significant contribution--a tangible difference--in the good work of one public interest organization.

Three of the eight externship programs fund two externs simultaneously, one for litigators and one for non-litigators, thus ensuring that the externships appeal to all department groups of the participating firms. The following paragraphs describe the eight pro bono externship programs, beginning first with the three "litigation/corporate" externship programs of

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[5] Although Milbank, Tweed, Hadley and McCloy ("Milbank") calls its program an "internship," given its similarity to the externship programs described in this report, the Committee has included Milbank's program under its review of externships.

Cleary Gottlieb Steen & Hamilton, Skadden, Arps, Slate, Meagher & Flom, and Weil, Gotshal & Manges. The report then reviews the externship programs of Chadbourne & Parke, Kramer, Levin, Naftalis & Frankel, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Milbank, Tweed, Hadley and McCloy, and Willkie Farr & Gallagher.

The Dual Litigation/Corporate Externships

The dual litigation/corporate externships of Cleary Gottlieb Steen & Hamilton, Skadden, Arps, Slate, Meagher & Flom, and Weil, Gotshal & Manges sponsor two externships each: one for litigation associates and one for corporate associates. All three programs place their corporate extern with the Lawyers Alliance for New York ("Lawyers Alliance"). According to Lawyers Alliance's executive director, Sean Delaney, these programs have eliminated the need for the Lawyers Alliance to hire junior staff attorneys, allowing it to focus its resources on its programs and senior staff attorneys.

Cleary Gottlieb Steen & Hamilton
Non-Profit Providers: MFY Legal Services
Lawyers Alliance for New York
Length of Externships: Four months.

Cleary Gottlieb Steen & Hamilton ("Cleary Gottlieb") has two externship programs: a litigation-oriented one at MFY Legal Services ("MFY") and a transactions-oriented one at Lawyers Alliance. Associates from Cleary Gottlieb do four-month "rotations" at each organization. There is always one associate working at each office. The outgoing extern generally passes his or her caseload on to the incoming extern, although outgoing associates occasionally retain externship cases when they return to Cleary Gottlieb.

Partners from Cleary Gottlieb have been involved with MFY Legal Services since the 1960s. The externship program dates back at least to 1975. The focus of MFY's legal work is on providing legal assistance to tenants facing eviction, and the externs spend a significant portion of their time in Housing Court. One former extern, who had handled an average of about 15 to 20 cases at a time, stated that he had a lot of autonomy in handling cases, including interviewing potential clients and determining which ones had meritorious cases that should be pursued. He estimated that during his externship he made 15 to 20 appearances in front of a judge, including 5 or 6 formal motions and one trial

MFY is happy with the program because the Cleary Gottlieb attorneys are helping with the agency's case load, and the clients are very pleased with the legal services they are receiving. Lynn Kelly, MFY's executive director, is impressed with the program, as all of the externs are very good, experienced (sometimes senior-level) associates. Such experience is critical because, even though MFY heavily supervises each extern, its supervisor/staff ratio of about 1 supervisor to 11 case handlers precludes it from starting from the ground level with "greener" lawyers. Externs often must learn "on the job." Ms. Kelly also appreciated the different perspective that Cleary Gottlieb externs bring to the agency's intake and staff meetings in which the externs participate during their MFY tenure.

Lawyers Alliance is committed to community development work and mainly handles transactional and financial legal work for non-profit organizations. The organization relies heavily upon attorneys in private law firms taking cases on pro bono, but also has a legal staff which provides direct legal assistance. Cleary Gottlieb established the externship program with Lawyers Alliance in 1990. Cleary Gottlieb envisioned it as a means of getting involved with the economic side of community development and providing corporate associates with more opportunities to participate in pro bono work, which generally tends to be litigation-oriented.

Alan Bromberger, the former executive director of Lawyers Alliance, reported that the Cleary Gottlieb externship program is a fantastic program for the organization. The program greatly increases the capacity and expertise of Lawyers Alliance, as externs tend to be mid-level (3rd or 4th year) associates with experience in transactional work. In addition to the benefit of an additional attorney in the office, Mr. Bromberger cited the advantage of developing an ongoing partnership with Cleary Gottlieb, through which the firm has provided support to his organization.

George Grumbach, the partner in charge of pro bono activities at Cleary Gottlieb, spoke very positively about the externship programs. He said that the externs unanimously report their externships to be excellent learning experiences. One Cleary Gottlieb extern at MFY felt overwhelmingly positive about his MFY experience, describing it as a "win-win" situation for all involved--MFY, himself and Cleary Gottlieb. From his perspective, it was an excellent experience that greatly improved his skills and made him an all-around better lawyer. David Parish, another Cleary Gottlieb extern at Lawyers Alliance summed up the experience well: "Externships educate lawyers in the for-profit sector about non-profit law" and encourage lawyers to do more.[6]

Skadden, Arps, Slate, Meagher & Flom
Non-Profit Providers: Legal Aid Society (Volunteer Division)
Lawyers Alliance for New York.
Length of Externships: Four months.

Skadden, Arps, Slate, Meagher & Flom ("Skadden") sponsors two Skadden associates--a litigator and a non-litigator--to serve at the Volunteer Division of the Legal Aid Society ("Legal Aid-Volunteer") and Lawyers Alliance, respectively. Skadden modeled these fellowships on its successful externship program with the Washington Legal Aid Society that has been running out of Skadden's Washington, D.C. office for approximately six years.

The Skadden externships are geared toward third and fourth year associates, and it is possible that the externship will be open to second-year associates in the future. Each rotation

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[6] Rivkin, Associate "*Externships*," N.Y.L.J., Apr. 19, 1999, at 4.

lasts four months, and Skadden has tried to avoid gaps between the in-going and out-going externs. The externs' responsibilities at the two not-for-profits vary greatly, depending on the externs' interests and needs of the not-for-profits. For example, Bill O'Brien, Skadden's first litigation extern at Legal Aid-Volunteer, requested and received a caseload that allowed him to spend most of his time working in the office's Housing Development Unit representing tenant associations in litigation in New York State courts and part of his time representing individual tenants in Housing Court. The second extern, Troy Elder, wanted to work on elder law issues; Legal Aid-Volunteer, which does not have a full-time elder law attorney, but whose clients have elder law issues, happily obliged, and was very impressed with Mr. Elder's work, according to Marlene Halpern, Legal Aid-Volunteer's pro bono supervisor. At Lawyers Alliance, Jim Mathie, Skadden's first corporate extern, primarily worked on establishing a family childcare network--drafting the contract, researching the potential pitfalls, and directing a seminar to a network of settlement houses on implementation of the network. He also advised non-profits on a host of corporate law issues, including certificates of incorporation, bylaws and bankruptcy.

Mr. O'Brien complimented Legal Aid-Volunteer on its excellent mentoring, saying that the office's close supervision of his work made formal training unnecessary, even in the confusing world of Housing Court. His supervising attorney at Legal Aid-Volunteer, Andy Leher, added: "Supervising a motivated, quick learner does not require 10 to 12 hours per day." Lawyers Alliance also conducted seminars and made their lawyers available for Jim Mathie, who reveled in the high levels of responsibility that he received on his matters.

According to Ron Tabak, who is of counsel to Skadden and head of its pro bono program, the associates selected for each externship are highly valued, and the externships serve as a reward for their good work. However, the primary goal of the externships is to help the firm's pro bono program as a whole. Mr. Tabak expects the externs (i) to develop expertise in a pro bono practice during their externships, (ii) upon their return to the firm, to become mentors to others at the firm interested in the practice, and (iii) to persuade other Skadden attorneys to overcome understandable trepidation about serving clients outside the immediate confines of the attorney's expertise. The program is also expected to strengthen the firm's recruiting success because the program attracts lawyers hoping to participate in the program.

The externships also help with associate development because they allow associates to gain experience earlier in their careers. In addition to brief writing and court appearances, Mr. O'Brien attended tenant association meetings, at which he honed his skills in conveying complex litigation strategy to clients in plain language–a skill on which Mr. O'Brien intends to draw heavily now that he is expected to deal with clients more regularly as a mid-level associate.

All involved are very impressed with Skadden's externship programs. Mr. O'Brien believed the program came at a great time in his development, as he was given substantial responsibility at Legal Aid-Volunteer at a time when he was transitioning from a junior to mid-level associate. Mr. Mathie enjoyed seeing the great projects on which New York public interest lawyers have been working. Mr. Lehrer of Legal-Aid Volunteer found Mr. O'Brien to be "fantastic" and "super helpful," and commented on the benefit of having a full-time associate of

the caliber often found at Skadden. Legal Aid-Volunteer's pro bono supervisor, Marlene Halpern, confirms that the Skadden program has worked very well. She expressed interest in other firms replicating Skadden's program with her office. Sean Delaney of Lawyers Alliance, states that the externships allow him to steer resources to hiring additional senior staff attorneys and financing Lawyers Alliance's programs.

Weil, Gotshal & Manges
Non-Profit Providers: Legal Services for New York City--Brooklyn Branch
Lawyers Alliance for New York
Length of Externships: Three months.

Weil, Gotshal & Manges ("Weil Gotshal") is the latest firm to establish an externship program, having started its program in October 1999. Similar to Cleary Gottlieb's and Skadden's programs, Weil Gotshal sponsors two externships, one for junior litigation associates serving Legal Services for New York City--Brooklyn Branch ("Legal Services"), and one for junior corporate and real estate associates serving Lawyers Alliance on transaction-oriented projects. The externships are each three months long, allowing a total of eight associates to participate annually.

Weil Gotshal indicated in a firm-wide memo that it established the externships for several reasons:

> "First and foremost, the firm has always recognized its obligation to provide significant pro bono services to the community and the pro bono externship is a very efficient way to fulfill this obligation. By focusing a substantial effort in one place, the firm is able to make a significant impact--to really make a difference--in providing pro bono services to the community. The externship also provides an excellent opportunity for those associates with a personal commitment to pro bono to fulfill that desire in a meaningful way. By doing exclusively pro bono work for a period of time, associates will be able to see their efforts really making a difference."[7]

The litigation and corporate externships enhance Weil Gotshal's longstanding relationships with Legal Services and with Lawyers Alliance, respectively. Weil Gotshal has been matched with Legal Services through the Volunteers of Legal Service program, taking referred matters on a pro bono basis. In addition, a Weil Gotshal partner serves as the Board Chair for Legal Services, which provides civil legal services to poor people in New York City. Similarly, Weil Gotshal has been a major supporter of Lawyers Alliance in pro bono hours and financial donations.

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[7] William J. Dean, *Pro Bono Digest: Weil Gotshal Creates Pro Bono Externships*, N.Y.L.J., Sept. 13, 1999, at 3 (quoting the firm-wide memo).

Another benefit of Weil Gotshal's externships is the experience that the associates will gain from their work with the non-profits. The litigation extern will spend much of his/her time in the courtroom, seeking orders of protection in Family Court, litigating benefits, unemployment and social security/disability issues at administrative hearings, representing individual debtors in Bankruptcy Court and tenants facing eviction in Housing Court, and arguing Article 78 motions in New York's Supreme Court and Appellate Division. The corporate extern will do incorporations, applications for tax exemption, by-law drafting, contract and lease negotiations, mergers of non-profits and financial organizations, and workouts. The corporate extern also will give employment law advice and assist in structuring complex economic development projects and in developing low-income housing using tax-exempt bonds and low-income housing tax credit. The firm describes the value of this experience in the following manner:

> "The skills and knowledge acquired by [litigation] associates during their rotation at Legal Services will enhance their abilities as lawyers. Spending much of their time in the courtroom, associates will be able to receive the kind of hands-on experience, dealing directly with clients, judges and adversaries, that ordinarily is not available to junior associates. . . . [T]he skills and knowledge acquired by [corporate] associates during their rotation at Lawyers Alliance will enhance their abilities as lawyers. Once they return to the firm, the associates will be able to supervise others in their new area of expertise, thereby expanding the breadth of interesting pro bono opportunities available to lawyers in the corporate department."[8]

Both Legal Services and Lawyers Alliance are happy with the Weil Gotshal externships. Steven Bernstein, Legal Services' executive director, said the program was "going great," and believed that a three-month rotation could accomplish a lot with co-counseling, selective training sessions, and close supervision. Sean Delaney of Lawyers Alliance was impressed with the commitment that Weil Gotshal's firm management made to the program, as set forth in the firm-wide memo quoted above. Mr. Delaney credited the memo with alleviating associates' fear that externship participation would damage their long-term interests at the firm; indeed, the memo encouraged associates' participation in the externship program as one way they could show initiative in their own professional development. To ensure that the externship is valuable to both extern and non-profit, Lawyers Alliance offers periodic introductory workshops on oft-occurring client issues, as well as giving each extern a first-week orientation that includes a sampling of Lawyers Alliance's 19 different publications overviewing its practice.

Jordan Stern, Weil Gotshal's first corporate extern and a class of 1998 associate, sees the position as "an opportunity to immerse myself in the city and to work on issues important to New York."[9] During his first month at Lawyers Alliance, Mr. Stern has worked on a spinoff

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[8] *Id.*

[9] *Id.*

and dissolution and advised a non-profit organization trying to start up a charter school. After only one month, he feels "fully integrated." He relies on his firm experience for corporate law issues and on his Lawyers Alliance supervisors for non-profit issues. Already he feels a broader sense of accomplishment than he typically feels back at the firm, as his work at Lawyers Alliance goes more directly towards the betterment of community.

The Single Externship Programs

Chadbourne & Parke
Non-Profit Provider: The Door's Legal Services Center
Length of Externship: Six-to-ten weeks.

In February 1998, Chadbourne & Parke ("Chadbourne") established its externship program with the Door's Legal Services Center (the "Door"), a multi-service youth center established to provide preventive, enrichment and medical programs to over 5,500 adolescents annually, focusing on the unmet legal needs of these low-income clients. While volunteering at the Door for six-to-ten weeks, a Chadbourne associate lightens the Door's in-house attorneys' case load, which includes issues involving family law, such as foster care, paternity, child support, divorce, orders of protection, neglect and abuse, and custody; immigration, centering around the rights of undocumented young people; public assistance; health care and other entitlement benefits; education; labor and employment; and consumer fraud. Initially, the extern generally handles public assistance matters, and then branches out to other areas as the externship progresses. The extern is typically interviewing his/her first set of clients by the beginning of the second week.

Externs continue to receive their class's compensation and benefits during the externship, and are expected to attend departmental, practice group and all-attorney meetings, as well as remain in touch with the firm's pro bono partner, Bernard McCarthy. Past externs have come from the firm's corporate finance, project finance, New York transactions and litigation practices. All associates are eligible for the externship, although from a training perspective it is most appealing to junior associates.

Chadbourne's program is periodic in that it attempts to fill the outgoing extern's position at the Door as soon as possible, but does not constrain itself to having no gaps. This approach gives the firm more flexibility, which it has found to be necessary given associates' fluctuating workloads, but is a greater strain on the Door. Although the Door would like to alter this arrangement, the externship's benefits to the Door are worth the inconvenience. Michael Williams, a staff attorney at the Door, stated that the recent Chadbourne externs have quickly assimilated to the new environment, and are viewed as regular members of the Door's staff during their externships–no small achievement given the change in practice. To assist with the assimilation, the Door's staff supervise the extern closely, maintain an open-door policy for the extern's questions, and provide manuals on topics relevant to many of the typical problems experienced by the Door's clients.

Chadbourne established the program to help the firm recruit new associates, to heighten the visibility of pro bono at the firm, to increase the firm's pro bono hours, to enhance the firm's reputation generally, impress clients and improve associate morale. Mr. McCarthy confirms that these goals have been achieved.

Jennifer Johnson, an extern from mid-October 1998 to Christmas 1998 and currently a fourth-year corporate finance associate at Chadbourne, echoes Mr. McCarthy's enthusiasm for the program. During her externship, she helped over 30 young people with housing, immigration, family law, and public assistance issues, and found herself at the INS, welfare centers and Housing Court on various occasions. Although there was no formal training, she relied on the open-door policy of the Door's resident experts in these substantive law areas. Since returning to the firm, she happily has promoted the program.

Kramer, Levin, Naftalis & Frankel
Non-Profit Provider: South Brooklyn Legal Services
Length of Externship: Four months.

In the fall of 1998, Kramer, Levin, Naftalis & Frankel ("Kramer Levin") established an externship at South Brooklyn Legal Services (SBLS). The firm places volunteer associates at SBLS for four-month rotations. The externship is open to second- through fourth-year associates, but exceptions are made: recently, a first-year associate whom the firm felt had the maturity and confidence to do the job was selected.

Externs primarily represent tenants in Housing Court, ensuring that the externs receive abundant courtroom experience. "The program fills a training gap," says litigation partner and Pro Bono Committee Chair Jeffrey S. Trachtman. "We can provide research and writing experience at the firm as well as exposure to big case discovery--the paper side of a case--but it is unusual to provide associates with this much in-court and direct decision-making experience."[10] Externs have daily contact with clients, opposing counsel and judges.

Because housing work often focuses on negotiations, the externship is not limited to litigation associates, and Kramer Levin corporate attorneys have expressed interest in volunteering. Not surprisingly, the program has been well received by partners and associates alike. According to Mr. Trachtman, the externship even helps in recruiting new associates.

Jonathan Fried was Kramer Levin's first extern. Of his experience in Housing Court, Mr. Fried says, "I never felt as vital to my client's needs and as satisfied by my lawyering." He confirms that "opportunities for hands-on client advocacy, both in and out of the court, are only infrequently available to junior associates at a large corporate firm. However, at South Brooklyn, they are the order of the day." In addition to courtroom experience, externs receive

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[10] William J. Dean, *Pro Bono Digest: Expansion of Externship Program*, N.Y.L.J., Nov. 6, 1998, at 3.

plenty of negotiation and settlement experience. This experience, combined with direct client contact and responsibility, "helps make the externship appropriate for transactional attorneys, as well as litigators," according to Mr. Trachtman.

The externship experience can be a real boon to the extern's professional development. Mr. Fried confirms this: "First, by being completely responsible for all client contact and communication with adversaries, my ability to recognize, develop and understand legally relevant facts is substantially increased. Second, I am a far better advocate after several months of appearing before judges and conferring with my adversaries. . . . Overall, I believe the confidence that comes from making my own calls in my own cases is the greatest asset I have gained through this externship."

LeBoeuf Lamb, Greene & MacRae, L.L.P.
Non-Profit Provider: South Brooklyn Legal Services
Length of Externship: Three-to-four months.

Since 1987, LeBoeuf, Lamb, Greene & MacRae, L.L.P. ("LeBoeuf Lamb") has sponsored an externship program through which second- to fifth-year associates work for three to four months on housing litigation at South Brooklyn Legal Services ("SBLS"). Although still on LeBoeuf, Lamb's payroll, the externs work out of SBLS's offices, sometimes returning to the firm after hours to take advantage of its research facilities. Externs rotate through SBLS's offices one at a time, with a week of overlap to maintain continuity.

Partner Cynthia R. Shoss, who heads LeBoeuf, Lamb's pro bono practice, explains that, in addition to improving courtroom skills, the heavy load of housing cases that an extern handles--usually about forty cases--draws on and improves negotiation skills, because many cases are settled out of court. Accordingly, LeBoeuf, Lamb's externship program is not just for litigation associates; associates from the corporate, insurance, and utilities departments also have participated.

Associates generally value their externships. Indeed, one LeBoeuf, Lamb associate who had participated in the program left the firm for SBLS. Another former extern--John Aerni, now a partner at LeBoeuf--sits on SBLS's board. Through the externship program, LeBoeuf, Lamb has developed a close working relationship with SBLS. As a result, other attorneys at the firm work with SBLS on other pro bono matters, including housing cases.

John C. "Chip" Gray, SBLS's Project Director, views the externship program as one of the "most successful" pro bono activities in which he has ever been involved. (Indeed, it has been so successful that SBLS recently established the externship with Kramer, Levin, Naftalis & Frankel modeled on the LeBoeuf, Lamb program.) Mr. Gray explains that the externship program avoids what he sees as a potential pitfall of some pro bono programs in which one outside lawyer handles a single case: a high ratio of training time to working time. In contrast, SBLS's externs become increasingly productive over the course of their four months at SBLS,

and get through a lot of cases as a result. Mr. Gray also credits LeBoeuf, Lamb's senior partner level commitment to the program as an important ingredient in its success.

In addition, LeBoeuf, Lamb offers shorter externships as part of its summer program. Summer associates who spend at least 12 weeks at the firm can spend two of those weeks working for one of several legal services provider organizations. These organizations have included the Federal Public Defenders, as well as Mental Hygiene Legal Services and various other Legal Services offices. Summer associates also may propose a legal services provider organization of their choosing for approval by the firm, an option that resulted in one summer associate working for the NAACP Legal Defense and Education Fund, Inc.

LeBoeuf, Lamb views its externship programs as good training for associates, an effective tool for recruiting new associates, and a means of demonstrating the firm's commitment to providing pro bono services.

Milbank, Tweed, Hadley and McCloy
Non-Profit Provider: Various organizations of the associates' choosing
Length of Externship: Two months.

Milbank, Tweed, Hadley and McCloy ("Milbank") offers all of its in-coming associates the opportunity to spend two months of their first year doing pro bono work full-time, while receiving full compensation and benefits from the time they start. Associates who participate in the program alert Milbank's pro bono partner, Joe Genova, in the spring before their arrival, and state a preference for the nature of the work and the organization (or organizations) with which they would like to work. Most associates work at non-profits, and Mr. Genova assists them with the arrangements. The only "catch" for the associates is that they must begin the program the Monday after the July bar exam—a necessary deadline because of the firm's need to staff the often busy fall season and its desire to have externs participate in a week of mandatory off-site training when the rest of their class has arrived. Over the past few years, six to eight associates have taken advantage of Milbank's offer.

Most participants choose work of an adversarial nature, but participation is not limited to litigators. The program provides junior associates with an opportunity to take on significant responsibilities. Mr. Genova typically discusses the program with the host/collaborating non-profit, pushing for adequate supervision and training.

Not surprisingly, the program has been a useful means of recruiting attorneys. Several program participants with whom we spoke praised the program, which they saw as an important factor in their decision to work at the firm. Several participants were happy that the program was held early, as they felt more confident when they started work for paying clients at the firm, were able to keep pace with their classmates, and found themselves seeking out pro bono matters. Shane Heskin worked at New York Lawyers for the Public Interest ("NYLPI") this past summer, assisting in the development of a potential class action involving deaf public school students and the schools' refusal to instruct the deaf students in ASL. The experience has led

Mr. Heskin to join a city-wide disabilities task force and to investigate possible pro bono work in the area. His office mate, Dan Perry, spent his two months at Legal Aid Society's Capital Defense Unit, and was impressed with the high quality of legal representation that the Unit provided its clients. Upon his return to the firm, Mr. Perry took on an indigent's appeal of his first-degree assault conviction.

Milbank calls its program an internship, not an externship. Although the structure of the Milbank program does not lend itself to development of an ongoing relationship between the firm and legal services provider organizations in the same manner as the rotating externships, Milbank is able to "spread the wealth": over the past decade, Milbank has sent associates to over 20 different organizations including New American (NYANA), Advocates for Children of New York, Pro Bono Net, New York Legal Assistance Group, the Capital Defense Unit of Legal Aid, Housing Works, Brooklyn Legal Services A, NYLPI, Lawyers Alliance, and Lambda Legal Defense Fund ("Lambda"). Lambda, which had an extern in 1998, was impressed with the externship, noting that Milbank attorneys who were more experienced than the intern made valuable contributions by consulting with the intern during the program. Kim Sweet, a supervising attorney at NYLPI, for whom Mr. Heskin interned in August and September of this year, found Mr. Heskin to be very helpful and would welcome another Milbank intern.

Willkie Farr & Gallagher
Non-Profit Provider: MFY Legal Services
Length of Externship: Four-to-six months.

Willkie Farr & Gallagher ("Willkie") has had an externship program with MFY Legal Services since 1989. The Willkie externship is open to associates in their second through fifth year, but the participants are generally in their third or fourth year. Each rotation lasts from four to six months, during which the externs receive their regular firm pay and benefits. Although the externship is open to associates in all practice areas--the firm has had externs from its corporate, real estate, and other non-litigation departments--most of the externs have come from the litigation department. The externs exclusively represent tenants on housing issues and public benefits related to housing.

Willkie manages the program to permit a several-day overlap between externs, so as to ensure the out-going extern spends several days with the incoming extern. The extern is buddied with a senior MFY staff attorney, sharing court dates for the first two weeks to introduce the extern to Housing Court. MFY also holds informational lunches to discuss changes in the law and other topics relevant to its practice.

Lawrence Kamin, the past chair of Willkie's pro bono committee, sees the externship program as an effective way to provide legal services to the poor. He noted that the lawyering is better when an attorney is focusing on the problem full time, and that sending an extern to MFY is ultimately more efficient than having the firm handle cases on a piecemeal basis. Mr. Kamin also believes that the externship is beneficial because it allows the extern a closer involvement with the community being served. In addition, the externship assists in associate development

because the associate works more independently and learns to make strategic/tactical decisions on his/her own. For example, Jim Doyle, a third-year at Willkie who completed his externship this past summer, was in court three-to-four days a week and found the caseload and pace of litigation a challenge. He reports having greater confidence in taking over cases now that he has returned to the firm and a renewed commitment to doing pro bono work.

Willkie has an excellent relationship with MFY that stems from the success of the externship program. A Willkie partner is a member of the MFY Board. Lynn Kelly, MFY's executive director, is happy to have two externs–one each from Cleary and Willkie--simultaneously, as the two similarly situated associates provide each other with a good support system. Much is accomplished in a short period of time because the firms send experienced lawyers who are highly motivated and capable of learning quickly. These associates bring a new perspective to her organization, and she is confident that both sides learn from the cross-pollenization. Indeed, according to Ms. Kelly, "from MFY's perspective, lawyers who have worked in the trenches with us meeting the vital needs of poor clients become long-term supporters of pro bono and legal services."

FELLOWSHIPS

Three New York City firms--Fried Frank Harris Shriver & Jacobson, Sullivan & Cromwell, and Winthrop, Stimson, Putnam & Roberts--sponsor fellowships whose primary distinction from the externship programs described above is their service length of one or two years. Otherwise, the fellowships differ substantively enough from each other that their description is best left to the individualized treatment below.

Fried Frank Harris Shriver & Jacobson

Non-Profit Providers: NAACP Legal Defense and Educational Fund, Inc.
Mexican American Legal Defense and Educational Fund
Length of Fellowship: Two years.

Fried Frank Harris Shriver & Jacobson ("Fried Frank") offers unique pro bono fellowships with NAACP Legal Defense and Educational Fund, Inc. ("NAACP LDEF"), and the Mexican American Legal Defense and Educational Fund ("MALDEF"), two organizations with which Fried Frank has worked extensively in the past. The principal goal of the fellowships is to demonstrate that a strong commitment to social justice can go hand-in-hand with a career as a business or commercial litigator. Thus, the fellows spend two years with the firm as regular associates and then two years with the non-profit.

For the first two years of the programs, the fellows are assigned to the Fried Frank litigation department. During these first two years, the fellows are treated like all other incoming associates for most purposes, including compensation, benefits, training, assignments and reviews. One major distinction between the fellows and the firm's other associates is that the fellows are guaranteed to spend at least 20 percent of their time at Fried Frank on pro bono matters. The fellows are also given fellowship mentors, who are partners in the litigation

department. Finally, the fellows benefit from the training that Fried Frank offers to all of its associates--the primary reason why the program begins at Fried Frank, as the non-profits later receive trained mid-level associates. Hector Villagra, a fellow who has been at MALDEF's Los Angeles office since April 1999, doubts that he could have handled his MALDEF workload as quickly or effectively without the extensive training he received while at Fried Frank. In addition to the on-the-job training at Fried Frank, Mr. Villagra benefitted from countless lawyer presentations on topics such as legal research, document drafting, and depositions; two NITA trial-training sessions, and several CLE programs. He noted that he was given special attention as a fellow.

During the third and fourth years, the fellows go to either NAACP LDEF's New York headquarters or to one of MALDEF's regional offices, and receive compensation and benefits from Fried Frank at the same level as other NAACP LDEF and MALDEF attorneys. Because Fried Frank sponsors a fellow for each organization each year, in future years there will be junior and senior fellows at the non-profits at the same time, thus easing the transition from firm to non-profit. Fellows at both non-profits participate in nearly every phase of hands-on litigation in state and federal court, from client interviews to drafting motions, involving many areas of civil rights law. The NAACP LDEF fellow focuses largely on employment, education, housing, voting rights and criminal justice issues, while the MALDEF fellow is expected to gain expertise in two out of five substantive areas--employment, education, immigrants' rights, political access and public resource equity--and the fellow is asked to indicate a preference. Mr. Villagra has focused primarily on education issues, monitoring consent decrees already in place and litigating California's Proposition 227, which abolished bilingual education.

Both fellows are also involved in non-litigation advocacy: the NAACP LDEF fellow may speak at public forums or work with community-based organizations to help them advocate on their own behalf; and the MALDEF fellow may speak on either of the fellow's two areas of expertise, including educational advocacy (responding to the media and speaking at public forums) and legislative advocacy (analyzing proposed legislation and testifying before legislative bodies upon request).

A committee comprised of representatives from Fried Frank, NAACP LDEF and MALDEF selects fellowship candidates who demonstrate sincere interest in both corporate and public interest litigation. After completing the four-year program, a fellow may return to Fried Frank as a fifth-year associate. A fellow's ability to remain at either NAACP LDEF and MALDEF is limited by the non-profit's needs and resources at the time of the fellowship's completion.

Sullivan & Cromwell

Non-Profit Provider: Not applicable. Program run in coordination with the Pro Se Office for the United States District Court for the Southern District of New York

Length of Fellowship: One year.

Since 1989, Sullivan & Cromwell has sponsored a pro bono fellowship program to help provide representation for indigent pro se plaintiffs with actions pending in the United States District Court for the Southern District of New York.

The fellowship developed out of Sullivan & Cromwell's participation in the Pro Bono Panel of the Southern District of New York. Theoretically, law firm members of the Panel agree to accept assignment each year of two or three cases brought by indigent pro se plaintiffs in civil cases that have been identified by a judge of the Court as being of sufficient merit to justify assignment of counsel. The cases include prisoners' rights and other civil rights actions, employment discrimination litigation and a wide variety of other matters covering subjects from defamation to securities fraud.

The Sullivan & Cromwell fellowship is filled by an attorney who is completing a one- or two-year judicial clerkship. The attorney must apply for a permanent position as a Sullivan & Cromwell associate and meet the firm's standards for employment. The fellow spends one year representing civil pro se indigent plaintiffs on a full-time basis, selecting cases primarily from the case files of pro se litigants regularly kept in the S.D.N.Y. Pro Se Office. Less frequently, the fellow accepts representation of pro se litigants who directly solicit the fellow's or firm's assistance or whose case has been referred to the fellow for representation by the presiding judge. The fellow handles all phases of litigation, including motion practice and trials. The fellow also continues to work on ongoing cases handled by former fellows. The transitions from the old to the new fellow have been basically seamless: past fellows often remain part of the litigation team and are available (as are all Sullivan & Cromwell lawyers) to advise and consult on tactics, strategy, questions of evidence, procedure and other matters, as needed. Indeed, other Sullivan & Cromwell associates often become the fellow's co-counsel, thus spreading the valuable litigation experience throughout the firm and allowing the fellow to take on the representation of additional clients.

The fellow is a full-time employee of Sullivan & Cromwell whose pay and benefits are the same as other firm associates employed after a clerkship. The fellow is provided with office space, and secretarial and other services. It is understood that the lawyer accepting the fellowship is prepared and expected to remain at Sullivan & Cromwell at the conclusion of the fellowship as a regular associate in the firm's litigation group.

Through the fellowship, the firm has developed a particular expertise in prisoner civil rights litigation and has successfully advanced and argued issues of wide-ranging importance in this area.

According to Lois Bloom, the head of the Southern District of New York's Pro Se Office, the Court has been very pleased with the fellowship and hopes that other firms will replicate Sullivan & Cromwell's program, which has helped to address a specific need of the Court in an efficient manner.

The fellows themselves have uniformly praised the program as "an extraordinary opportunity for any young lawyer." Penny Shane, the program's first fellow, who recently became a partner at the firm, found the "clients' gratitude and growth, after years of confusion about how to proceed and frustration at their prior dealings with the legal system," to be her favorite part of the program. A recent fellow summed up benefits of the Sullivan & Cromwell program as follows:

> The fellowship is an ideal means for addressing the great need for private attorneys to donate time to pro se cases. Because my mandate was to devote my entire year to pro bono work, I was freed from any burden to weigh how much time to allocate to pro bono versus paying work. In addition, I developed an expertise in this area and was able to draw on the experience of past fellows so that I was not forced to reinvent the wheel (as I might have if I had been taking cases on an ad hoc basis). Finally, Sullivan & Cromwell provided its full firm resources to these cases, giving me the ability to litigate them completely, without the concerns for cost-cutting that are endemic to publicly financed Legal Services corporations. As a result of all these factors, everyone wins: the litigant is given a meaningful opportunity to be heard in a federal court, the pro se docket in the Southern District is reduced, a young attorney gains incredible experience, and a law firm helps to fulfill its professional commitment to donate its resources to the public good.

Winthrop, Stimson, Putnam & Roberts
Non-Profit Provider: Various organizations of the associates' choosing
Length of Fellowship: One year.

For several years, Winthrop, Stimson, Putnam & Roberts ("Winthrop Stimson") has sponsored a one-year fellowship for an incoming first-year associate. Interested incoming associates submit proposals to work for a legal services provider organization of their choosing, and the firm generally awards the fellowship to one associate. Rather than choose between two particularly compelling proposals last year, however, the firm awarded the fellowship to two associates, who worked with the Sanctuary for Families' Center for Battered Women in New York City, and the Equal Justice Initiative, a capital defense project in Montgomery, Alabama.

A recent fellow, Erin Raccah, worked with the advocacy organization National Partnership for Women and Families. As a fellow, Ms. Raccah not only reviewed and drafted amicus briefs (including several Supreme Court amicus briefs concerning certiorari petitions), but she also spent a substantial portion of her time on legislative activities, primarily related to health care reform. These activities included drafting and reviewing legislation, lobbying (including drafting congressional testimony), and presenting legislative updates to interested governmental and private groups. Ms. Raccah reports that her legislative experience has been very valuable in her work advising clients about ERISA and other employee benefits legislation as part of Winthrop, Stimson's employee benefits practice.

Donna Lenhoff, General Counsel for the National Partnership, praised Winthrop, Stimson's fellowship program for its generosity and flexibility. Ms. Lenhoff emphasized that it

is more beneficial to the National Partnership to have a lawyer on the organization's staff than to have to work with outside pro bono counsel. In addition to the value of receiving a full year's worth of a lawyer's time, these benefits include the deeper knowledge of the organization that an in-house lawyer develops and the added flexibility the organization has to direct an in-house lawyer's work to best serve the organization's needs at any given time. Moreover, Ms. Lenhoff pointed out that because outside counsel's conflicts checks can be time consuming, it often is not practical to retain outside counsel for short term litigation tasks, such as reviewing an amicus brief to decide whether the National Partnership should sign it.

Winthrop Stimson pays fellows half of a first year associate's salary, plus full benefits. After their fellowships, fellows start at the firm as first-year associates. Winthrop Stimson values the program not only for the experience the fellows gain, but also because it provides the firm with the opportunity to create new relationships, and augment existing relationships, with legal services provider organizations. Ms. Raccah adds that the program was a factor in her decision to join Winthrop, Simpson, because it demonstrated the firm's strong commitment to pro bono activities.

CRITIQUE OF PROGRAMS' VALUE

The accounts collected and compiled in this report indicate that the pro bono positions described above are an effective way in which private law firms and corporate law departments can team up with public interest law providers to achieve a mutually beneficial result. These programs have many benefits, including:

- effectively promoting the firms or companies;
- providing valuable experience to junior attorneys;
- attracting other attorneys to the firms or companies, as competition for the best legal talent requires firms and corporate law departments to distinguish themselves with programs such as these externships and fellowships;
- impressing clients or customers;
- assisting firms and corporate law departments to obtain better quality pro bono work;
- allowing firms and corporate law departments to gain expertise in particular pro bono areas, as returning lawyers serve as valuable resources to other attorneys looking to provide pro bono services in the area of the returning associates' expertise; and
- raising awareness of social issues often overlooked in large corporate law practices.

The positions are not without their flaws, which are largely the result of the firms' and legal services provider organizations' conflicting interests. For example, the shorter-term externships allow more associates to participate and thus arguably improve firm culture more than the longer term positions; however, these shorter term positions are potentially less productive for the non-profit organization, because new externs must be trained every few

months, start-up time is multiplied, and associates leave the positions just as they begin to master them. The fellowships, on the other hand, address this issue by extending their programs to one or two years. However, these longer fellowships come at the cost of having fewer lawyers participate in the program–a significant drawback, given that an oft-stated purpose of these pro bono positions is to improve a firm's pro bono culture.

There are other issues: for instance, the substantive law expertise that associates gain during their externship is unlikely to be directly applicable to the firm's practice, or that associates' work load may make it difficult for certain associates to free themselves up for the experience. In addition, most firms attempt to overlap their in- and out-going associates, but occasionally the overlap must be abbreviated. Other potential areas of concern include the non-profit's lack of support services, physical plant space, or technological resources to which associates have become accustomed.

Despite these issues, the pro bono positions clearly assist the non-profits more efficiently than individual pro bono work, which is much more spotty. The positions do not alleviate the obligations of each attorney at the participating firm to perform pro bono work, but the positions do enhance a firm's contribution to those serving the community's less fortunate. Legal services offices with whom we spoke are extremely enthusiastic about the programs, finding the programs to be far more effective than having cases spread out over several people working at law firms, because they add an attorney to the legal services office who focuses on the work of the office full time. SBLS's Chip Gray recently noted:

> "The externship program overcomes a central problem in big-firm lawyers doing pro bono work for Legal Services clients. It provides pro bono attorneys with the time and close supervision they need to handle efficiently a high volume of complicated cases in a field of law in which they have no prior experience. The substantial effort required of our staff to training pro bono pays off in the effective handling of a large number of cases, not just one or two. . . . The rotating associate program reflects pro bono work at its best: substantial firm and Legal Services resources focused to provide excellent representation to a high volume of clients with major problems, not scattered on a whole variety of peripheral issues."[11]

In addition, even though turnover and supervision remain issues with these programs, most legal services provider organizations confirmed that externs received critical support from past externs who had returned to the firm, allowing the non-profit to focus its resources elsewhere. Former externs thus continue to contribute to the program.

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[11] Dean, *Expansion of Externship Program*, N.Y.L.J., Nov. 6, 1998, at 3.

Arguably, a firm's contributing financially to a legal services office would be a more efficient way to meet the legal needs of the impoverished; however, efficiency is not the only goal of these programs. As Mr. Kamin of Willkie Farr recently noted: "Giving money is probably the most effective way to provide help, but it has nothing to do with a lawyer's obligation to do pro bono work, and doesn't form a bond between the lawyer and the community."[12] Steven Horowitz, the chair of Cleary Gottlieb's community legal assistance committee, echoes this sentiment: "We could give $150,000 to the organization directly, but we want to build a relationship with the non-profit and to bring the expertise back to the firm."[13]

Finally, several of the non-profit organizations noted the benefit of having large-firm lawyers working side-by-side with the non-profits' in-house attorneys. Past externs become long-term supporters of pro bono generally and of their externship host particularly–a vital connection for all non-profits hoping to continue pursuing their causes well into the next millennium.

RECOMMENDATIONS

Given the current crisis in funding legal services to the poor, the effective manner in which the externships and fellowships alleviate some of the legal services provider organization's burdens, and the need to strengthen each lawyer's commitment to performing pro bono, the Committee strongly encourages law firms and corporate law departments to consider establishing such programs.

Conversations with the programs' participants reveal important considerations that might be easily overlooked in setting up such a program. First, high-level management at both entities must support the program, because assigned attorneys must be free to start the externships on schedule, and the legal services provider must be prepared to make a serious commitment to the training and supervision of the externs and fellows. Firms and law departments must send a clear message to attorneys that participation in an externship or fellowship will not harm their long-term interests. As mentioned above, Weil Gotshal sent an unequivocal message via a firm-wide memo that the firm would view externship/fellowship participation positively in its review of associates.

Second, the firm or law department and the legal services provider organization must strive to iron out the details of the arrangement in advance so that the externship or fellowship program meets everyone's needs and expectations. The critical issue is determining the length

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[12] Rivkin, *Associate "Externships"*, N.Y.L.J., Apr. 19, 1999, at 1.

[13] *Id.*

of the externship or fellowship--it must be long enough to be valuable to the legal services provider, but not too long so as to jeopardize an attorney's professional development or to preclude other attorneys from participating. It is also important for the firm or law department and the legal services provider to agree on the level of attorney that will be participating in the program.

In addition to communicating before the positions are established, communication remains critical during the course of the programs, particularly for feedback as to how the programs are working and how the program's efficiencies can be improved. Firms and law departments should consider allowing the legal services provider some input into the process of selecting the externs or fellows. This would enable the non-profits to better match incoming attorneys' expertise with the work of the organization and might assist in smoother transitions. Performance evaluations by the non-profit might also alleviate any concerns of the legal services provider of being left out of the process.

Third, early selection of individual extern candidates and early scheduling of externships diminish last-minute haggling as to whether an attorney can be spared and ensures that an attorney will not be dragging baggage to the externship. Firm and law department practice groups should be given sufficient notice of the unavailability of a future extern.

Finally, the efficiency of the programs can be improved by extending support services and technological assistance to the legal services provider. The financial strains on these providers have caused them to cut back support staff and to delay updating their offices' technology. Providing such assistance to the cash-strapped organizations would extend the effectiveness of the externs and fellows. Firms and law departments should also consider contributing financially to the non-profit to defray the costs of supervising the externs.

Most participating non-profits with whom we spoke were open to establishing similar externship and fellowship programs. In addition, New York State has a wealth of non-profits that would benefit from full-time extern pro bono programs like the ones detailed above. Firms and corporate law departments interested in establishing such externship or fellowship relations with non-profits can call Anthony Cassino, Pro Bono Director, Department of Pro Bono Affairs, New York State Bar Association (518-463-3200), for further guidance.

Pro Bono and Public Interest Committee
Commercial and Federal Litigation Section
New York State Bar Association

November 1999

APPENDIX A: OVERVIEW OF PROGRAMS

PRIVATE LAW FIRM	TYPE OF PROGRAM	NO. OF POSITIONS	LEGAL SERVICES ORGANIZATION	LENGTH OF POSITION	TYPE OF WORK	ROTATION	ATTORNEY'S COMPENSATION
Chadbourne & Parke	Externship	One	The Door's Legal Services Center	Six-to-ten weeks	Litigation/corporate mix	Periodic rotation	Full salary and benefits of class
Cleary Gottlieb Steen & Hamilton	Externship	Two	MFY Legal Services Lawyers Alliance for New York	Four months	Litigation Corporate	Continuous rotations	Full salary and benefits of class
Fried Frank Harris Shriver & Jacobson	Fellowship	Two	NAACP Legal Defense and Educational Fund, Inc. Mexican American Legal Defense and Educational Fund	Two years	Litigation Litigation	Continuous rotations	Salary and benefits equal to other staff attorneys at non-profits
Kramer, Levin, Naftalis & Frankel	Externship	One	South Brooklyn Legal Services	Four months	Litigation	Continuous rotation	Full salary and benefits of class
LeBoeuf, Lamb, Greene & MacRae, L.L.P.	Externship	One	South Brooklyn Legal Services	Three-to-four months	Litigation	Continuous rotation	Full salary and benefits of class
Milbank, Tweed, Hadley and McCloy	Externship[1]	Open to all incoming associates	Various organizations of the associates' choosing	Two months (from August to October only)	Varies, depending on the non-profit chosen	No rotation	Full salary and benefits of class
Skadden, Arps, Slate, Meagher & Flom	Externship	Two	Legal Aid Society (Volunteer Division) Lawyers Alliance for New York.	Four months	Litigation Corporate	Continuous rotations	Full salary and benefits of class
Sullivan & Cromwell	Fellowship	One	Not applicable. Program run in coordination with the Pro Se Office for the United States District Court for the Southern District of New York	One year	Litigation	Continuous rotation	Full salary and benefits of class
Weil, Gotshal & Manges.	Externship	Two	Legal Services for New York City--Brooklyn Branch Lawyers Alliance for New York	Three months	Litigation Corporate	Continuous rotations	Full salary and benefits of class
Willkie Farr & Gallagher	Externship	One	MFY Legal Services	Four-to-six months	Litigation	Continuous rotation	Full salary and benefits of class
Winthrop, Stimson, Putnam & Roberts	Fellowship	Two	Various organizations of the associates' choosing	One year	Varies, depending on the non-profit chosen	No rotation	Half of first-year's salary and full

[1] Although Milbank, Tweed, Hadley and McCloy calls its program an "internship," given its similarity to the externship programs described herein, the Committee has included this program under its review of externships.

							benefits